

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TROY D. GERMAN,)	
)	
Plaintiff,)	
)	
-vs-)	Case No. CIV-19-0751-F
)	
BILLY D. "RUSTY" RHOADES,)	
individually, et al.,)	
)	
Defendants.)	

ORDER

Defendants Rhoades, Harrell and Simpson (the RHS defendants) move for leave to file a new motion for summary judgment. Doc. no. 136. Defendant Orr moves for permission to join the RHS defendants' motion. Doc. no. 140. Plaintiff German filed a combined response brief, objecting to both motions. Doc. no. 143. The RHS defendants filed a reply brief for purposes of their motion. Doc. no. 145. A reply brief was not permitted with respect to Orr's motion to join. Accordingly, both motions are at issue.

For the reasons set out below, Orr will be deemed to have joined the RHS defendants' motion, and defendants' motion seeking leave to file a new motion for summary judgment will be denied.

Discussion

The local rules of this court provide that "Absent leave of court, each party may file only one motion under Fed. R. Civ. P. 56." LCvR56.1(a). Thus, the general rule is that only one motion for summary judgment is permitted. There are good reasons for this rule, including the fact that without it, the potential would exist for

never-ending rounds of summary judgment motions which would cause delays, waste the resources of the parties and the courts, and interfere with the prompt administration of justice. While there are situations in which an exception to the general rule may be called for, this is not one of them.

The following circumstances are relevant.

-- This case is set on the court's January 11, 2022, trial docket, which begins less than two months from now. Doc. no. 121. Pre-trial filings are due December 21, 2021. Doc. no. 142 (published trial docket).

-- The RHS defendants have already had what amounts to two tries at summary judgment.¹

-- The deadline for dispositive motions expired more than a year ago, on November 1, 2020. Doc. no. 21.

-- Defendants have not shown that they could not have filed the motion sooner. The RHS defendants' motion for leave to file a new summary judgment motion is founded, in part, on German's deposition testimony. According to German, his deposition was taken on April 14, 2021, more than six months before the RHS defendants filed the present motion. Doc. no. 143, pp. 1-2. The RHS defendants contend that German's deposition testimony, in combination with certain rulings by this court, make it impossible for plaintiff to prove his claims at trial. But the relied-upon court rulings occurred on February 17, 2021, and September 2, 2021.² The RHS defendants did not move for leave to pursue a second summary

¹ On November 24, 2020 (doc. no. 78), the court's ten-page order denied in part and reserved in part the RHS defendants' motion for summary judgment as well as Orr's motion for summary judgment. On December 1, 2020, the RHS defendants moved for reconsideration of that order. Doc. no. 82. On February 17, 2021, the court entered a thirty-five-page order which denied the RHS defendants' motion to reconsider and ruled on the reserved portions of defendants' summary judgment motions. Doc. no. 106.

² Doc. no. 136, pp. 2-3, citing rulings at doc. nos. 106, 133.

judgment motion until October 28, 2021, almost two months after the latest of these rulings.³

-- Defendants' reasons for seeking another shot at summary judgment are basically that it is now clear (at least to them) that plaintiff will not be able to prove his claims at trial. If that is so, then the trial will establish it. On the flip side, plaintiff contends defendants' proposed new arguments for summary judgment are actually re-treads. Plaintiff argues defendants would not prevail even if another motion for summary judgment were allowed. In short, this is not a situation in which defendants seek another summary judgment motion to present arguments that would clearly obviate the need for a trial.

Conclusion

After careful consideration, Orr's motion to join the RHS defendants' motion is **GRANTED**. Doc. no. 140. Rhoades, Harrell and Simpson's motion, now joined in by Orr, seeking leave to file a new motion for summary judgment, is **DENIED**. Doc. no. 136.

IT IS SO ORDERED this 15th day of November, 2021.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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³ Defendants indicate they were waiting for the conclusion of Dane Towery's deposition, which they say the parties were not able to schedule until October 27, 2021. Be that as it may, the motion was filed too close to trial and more than a year past the deadline.